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In the

Supreme Court of the United States

OCTOBER TERM, 1964

No. 496

ESTELLE T. GRISWOLD
AND
C. LEE BUXTON,
Appellants,
vs.
STATE OF CONNECTICUT
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF ERRORS OF CONNECTICUT

BRIEF FOR APPELLEE

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SUBJECT INDEX

APPENDICES

AUTHORITIES CITED

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OPINIONS BELOW

The opinion of the Supreme Court of Errors of Connecticut is reported in 151 Conn. 544, 200 A.2d 479. It is reprinted in the record at pages 61-63.

The opinion of the Appellate Division of the Circuit Court of Connecticut is reported in 3 Conn. Cir. 6. It is reprinted in the record at pages 40-50.

JURISDICTION

On November 10, 1961 a warrent was issued charging that the appellant C. Lee Buxton, a duly qualified and licensed

physician, and appellant Estelle T. Griswold "in violation of the provisions of Section 53-32 and 54-196 of the General Statutes of Connecticut, did assist, abet, counsel, cause and command certain married women to use a drug, medicinal article and instrument, for the purpose of preventing conception." (R. 1, 7) The appellants were arrested on the same date and on November 24, 1961 the appellants demurred to the informations on the grounds that as the cited statutes would be applied to the appellants they would be unconstitutional in that they would deny the appellants' rights to liberty and property without due process of law in violation of the 14th Amendment to the Constitution of the United States and that they would deny them their rights to freedom of speech and communication of ideas under the 1st and 14th Amendments to the Constiution of the United States. (R. 2, 8)

The demurrers were overruled. (R. 3-6, 9-12) On January 2, 1962, the appellants, after trial to the Court, were found guilty and sentenced to pay a fine of $100 each. (R. 13)

On January 10, 1962 after stipulation of the parties the Court entered an order for joint appeals. (R. 14-15)

Appellants filed an assignment of errors (R. 33-37) and an appeal was taken to the Appellate Division of the Circuit Court which affirmed the judgment of the Circuit Court, 6th Circuit in an opinion rendered January 7, 1963. (R. 40-50)

The Appellate Division certified two questions to the Supreme Court of Errors of Connecticut. (R. 49-50)

On January 31, 1963 appellants petitioned for certification of additional question which was granted on February 19, 1963. (R. 52-60). On April 28, 1964, the Supreme Court of Errors affirmed the judgment of the Circuit Court. (R. 61-65). Execution was ordered stayed on May 20, 1964 and on July 22,

1964 a motion of Appeal to the Supreme Court of the United States was filed with the Supreme Court of Errors of Connecticut. (R. 65-66).

On December 7, 1964, this Court noted probably jurisdiction. (R. 67).

This Court has jurisdiction under 28 U.S.C. .1257 (3). *Mergenthaler Linotype Co. v. Davis*, 251 U.S. 256, 259 (1919)

STATUTES INVOLVED

Statutes involved in this case are Sections 53-32 and 54-196, General Statutes of Connecticut, Revision of 1958.

Said statutes are quoted in Brief for Appellants, page 3. They will also be found set out in the Record, page 50.

QUESTIONS PRESENTED

Where the appellants served as director (Estelle T. Griswold) and medical director (C. Lee Buxton) of a center to which married women came to obtain contraceptives and instructions as to their use to prevent pregnancy and where such married women received such contraceptive articles and instructions (in some cases from the appellants themselves) did Section 53-32, General Statutes of Connecticut, Revision of 1958 in connection with Section 54-196 of said statutes: 1) deny the appellants their rights to liberty and property in violation of the Fourteenth Amendment to the Constitution of the United States? 2) deny these appellants their rights to freedom of speech and communication of ideas under the First and Fourteenth Amendments to the Constitution of the United States?

STATEMENT OF THE CASE

The Planned Parenthood Center of New Haven, hereinafter referred to as the Center, was opened on November 1, 1961 to provide information, instruction and medical advice to married persons as to the means and methods of preventing conception and to educate married persons generally as to such means and methods (Finding, Par. 1, R. p. 16,17). The Center was located at 79 Trumbull Street in New Haven (Finding, Par. 2. R. p. 17). The Center operated from November 1, 1961 to November 10, 1961. (Finding, Par. 3, R. p. 17). The Planned Parenthood League of Connecticut also occupied an office on the second floor of the same building (Finding Par. 4, R. p. 17).

The defendant Estelle T. Griswold held the salaried office of executive director of the League (Finding, Par. 5, R. p. 17). She was also the Acting Director of the Center and in charge of the Administration and the educational program both before the Center opened and during its time of operation (Finding, Pars. 6, 11, R. pp. 17,18)

The defendant C. Lee Buxton is a physician licensed to practice in the State of Connecticut (Finding, Par. 7, R. p. 17). He was the medical director of the Center both before its opening and while it was in operation. (Finding, Par. 8 R. p. 17). As such medical director and after consultation with the Medical Advisory Committee of the Center which committee was appointed by him, the defendant C. Lee Buxton made all medical decisions as to the facilities of the Center, including the types of contraceptive advice available and provided at the Center, the types of contraceptive articles and materials available at the Center for distribution to patients, and the methods of providing the same (Finding, Par 9, R. p. 18). In addition, the defendant C. Lee Buxton on several occasions examined and

gave contraceptive advice to patients at the Center, while it was in operation from November 1 to November 10, 1961 (Finding, Par. 10, R. p. 18).

The defendant Estelle T. Griswold on several occasions between November 1 and November 10, 1961, while the Center was in operation, interviewed persons prior to giving them appointments at the Center; took case histories; conducted the group orientation session, describing the various methods of contraception available at the Center; and gave a woman a drug or medicinal article to prevent conception (Finding, Par. 13, R. p. 20).

Joan B. Forsberg, a housewife and mother of three children living with her family in New Haven, Connecticut, upon learning of the existence of the Center, arranged for an appointment at the Center which was made for November 8, 1961, and on that date she went to the Center seeking contraceptive advice (Finding. Par. 14, R. p. 20). She gave a history to a receptionist, attended an orientation session at which the defendant Estelle T. Griswold instructed her and other women as to the various methods of contraception available at the Center, and told her and the other women that they could choose the method they would individually prefer and be furnished with the necessary materials if the doctor approved, was given a pelvic exmination by a staff doctor, was told by the staff doctor that the anti-ovulation pill method of contraception which she had chosen was all right for her to use, was instructed by the doctor in its use, was thereafter given a supply of sixty anti-ovulation pills (State's Exhibit K) by the person on duty at the registration desk at the direction of the defendant Estelle T. Griswold, and before leaving paid a fee to the Center and was told to return to the Center in two months (Finding, Par. 14, R. p. 20). After her visit to the Center, Mrs. Forsberg used approximately thirty of these pills (State's Exhibit K) furnished her at the

Center for the purpose of preventing conception and the use thereof did prevent conception (Finding, Par. 15, R. p. 20).

On November 7, 1961, Marie Wilson Tindall, a housewife and mother, living in New Haven, Connecticut, having made an appointment, went to the Center seeking contraceptive advise (Finding, Par. 16, R. pp. 20,21). She had a history taken by the receptionist, attended an orientation session with other women at which time were described the various types of contraceptives available at the Center, was given a pelvic examination by a staff doctor, told the doctor that she had chosen a diaphragm as the type of contraceptive she wished to use, was fitted and given by the doctor a diaphragm and accompanying articles (State's Exhibits M through P), and thereafter was instructed in how to use them, and before leaving paid a fee of $7.50 to the Center (Finding, Par. 16, R. pp. 20, 21). After her visit to the Center, Mrs. Tindall used the diaphragm and other articles (State's Exhibits M through P) furnished to her at the Center for the purpose of preventing conception (Finding, Par. 17, R. p. 21).

On November 9, 1961, Rosemary Anne Stevens, married almost a year and living with her husband in New Haven, Connecticut, having made an appointment, went to the Center seeking to obtain contraceptive advice additional to that previously attained (Finding, Par. 18, R. p. 21). While at the Center Mrs. Stevens had her history taken by the defendant Estelle T. Griswold, attended an orientation session at which the defendant Estelle T. Griswold described the methods of contraception available at the Center, was given a pelvic examination by the defendant C. Lee Buxton acting as staff doctor on that day at the Center, was advised by the defendant C. Lee Buxton that the method of contraception (ortho-gynol contraceptive jelly) which she had chosen was satisfactory to her, was given instruction by him as to its use, and before leaving

the Center was given a tube of orthogynol vaginal jelly (State's Exhibit L) by the defendant Estelle T. Griswold and paid a fee of $15.00 to the Center (Finding, Par. 18, R. p. 21). After her visit to the Center, Mrs. Stevens used this jelly (State's Exhibit L) for the purpose of preventing conception (Finding, Par. 19, R. p. 21). Mrs. Stevens' decision to continue the method of contraception she had been using was based on advise received by her from the defendants Estelle T. Griswold and C. Lee Buxton (Finding, Par. 20, R. p. 22).

HISTORY OF STATUTE

The Connecticut statute relating to contraceptives stems from the Comstock Act of 1873 (17 Stat. 598) currently 18 U.S.C. Sec. 1461, 18 U.S.C. Sec. 1462 and 19 U.S.C. Sec. 1305.

As originally introduced the Federal Bill contained an exemption for physicians from the portion of the bill which prohibited the possession, sale, or mailing of contraceptives. The Bill was amended on the floor of the Senate by Senator Buckingham of Connecticut by striking out the exemption in favor of physicians. The bill as amended passed and became 17 Stat. 598 (1873). In 1878 an attempt to amend the statute failed. From 1924 to 1936 twelve bills were introduced without success.[1]

In 1881 New York became the first state to pass a statute regulating contraceptive devises modeling the Comstock Act, N.Y. Penal Code of 1881, Sec. 318-19.

On March 28, 1879 after legislative battle Connecticut amended Conn. Gen. Stat. Rev. 1875, Title 20, Ch. 8, Sec. 4,

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[1] An excellent presentation of the history of the Comstock Act as well as statutes on contraceptives and cases reported under the federal and state statutes is found in Smith, *The History and Future of the Legal Battle Over Birth Control*, 49 Cornell Law Quarterly 275 (Winter, 1965).

p. 513 — which concerned introduction of obscene matter into the family or school — By adopting Public Act (of 1879) Chapter LXXVIII which added to the then existing statute provisions on possession of obscene material, the use of any drug, medicinal article, or instrument for the prevention of conception, or causing unlawful abortion. The text of this public act and the statute it amended are set out in Appendix A to this Brief. For a history of the legislative action on this act see Appendix B to this Brief. The part of the above statute dealing with the use of any drug, medicinal article, or instrument for the purpose of preventing conception was made a separate statute in the statutory revision of 1885 (Section 1539) and placed in Chapter 99 Offenses Against Humanity and Morality. From 1885 to the present day there have been five revisions of the General Statutes of Connecticut. The statute was reprinted each time, Conn. Gen. Stat. Rev. 1902, Section 1327; Rev. 1918, Section 6399; Rev. 1930, Section 6246; Rev. 1949, Sec. 8568; and Rev. 1958, Section 53-32. The statute in 1958 was taken out of the chapter on Offenses Against Humanity and Morality and placed in Chapter 939, Offenses Against the Person.

From 1879 to 1916 no attempt was made to either repeal or amend the contraceptive statute. In 1917 a bill was introduced which sought outright repeal of the statute. It failed. From 1923 to 1935 bills were introduced at each session of the General Assembly attempting to amend or repeal the statute all without success. There was no legislative activity in this area from 1935 to 1941. From 1941 to the present there have been attempts to amend or repeal the contraceptive statutes at each session of the legislature. All these bills have failed. Appendix C of this Brief is a history of the unsuccessful attempts to alter what is now Conn. Gen. Stat. 53-32. It is interesting to note that most of these attempted amendments

sought to insert an exception into the statute for physicians to prescribe contraceptives for health purposes.

Connecticut and New York are not alone in having statutes based on the Comstock Act, as of December 31, 1964 thirty states of the Union still have some statute specifically applicable to the prevention of conception.[2]

Although no attempt has been made to check the charters and/or ordinances of the municipalities in the states with no statutes on contraceptives, there is at least one city having such a law which can be noted from the case of *McConnell* v. *Knoxville*, 172 Tenn. 190, 110 S. W. 2d 478 (1937) upholding the power of the City of Knoxville, Tennessee to regulate the sale of contraceptives within its city limits.

Of the thirty states which have statutes regarding contraceptives, law of Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, and New York, would be violated by the facts in the case at bar.[3]

SUMMARY OF ARGUMENT

The decision of the General Assembly of Connecticut that the use of contraceptives should be banned is a proper exercise of the police power of the state.

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[2] Citation of the various statutes will be found in the Appendix A at pages 23a to 27a of the Brief Amicus Curia filed by the Planned Parenthood Federation of America, Inc. in this case.

[3] Mass. Ann. Laws (1956) tit. 1, Sec. 21; Minn. Stat. (1961) Secs. 617.25, Laws 1963, ch. 753; Miss. Code Ann. (1956), Secs. 2289; Mo. Rev. Stat. (1959), Secs. 563.300; Neb. Rev. Stat. (Reissue 1956). ch. 28 Secs 423, N.Y. Pen. Law art. 106. Secs. 1142, 1143.

ARGUMENT

I

APPELLANTS DO NOT HAVE STANDING TO RAISE CONSTITUTIONAL CLAIMS OF PERSONS NOT PARTIES TO THESE ACTIONS

The appellants were convicted as accessories (Sec. 54-196) to violations of Connecticut's Anti-Contraceptive Statute (Sec. 53-32). The basis of their conviction was that they provided women with contraceptive devices and instructed them as to their use as contraceptives. Since the appellants are asking this Court to upset their convictions, it logically follows that the issues raised here should be confined to the question of whether or not the Anti-Contraceptive Statute violates the appellants' constitutional rights.

The Court has on numerous occasions laid down the rule that one cannot attack a statute on the ground that it violates the rights of third parties. *New York ex rel Hatch* v. *Reardon* 204 U.S. 152 (1907); *Yazoo M.V.R.R.* v. *Jackson Vinegar Co.*, 226 U.S. 217 (1912); *Standard Stock Food Co.* v. *Wright*, 225 U.S. 540 (1912); *Collins* v. *Texas*, 223 U.S. 288 (1912); *Rosenthal* v. *New York*, 226 U.S. 260 (1912); *Tileston* v. *Ullman*, 318 U.S. 44 (1943).

In *Collins* v. *Texas*, supra, the holding was that an osteopath convicted for practicing medicine without a license did not have standing to contend that the statute in question infringed on the religious freedoms of certain religious groups.

The *Tileston* case, supra, is even more directly in point and should be considered as *stare decisis* on the issue of whether the appellants can raise the constitutional claims of their patients or potential patients. The *Tileston* case was a previous chal-

lenge of Connecticut's Anti-Contraceptive Statute by a physician who attempted to raise the constitutional rights of his patients. This Court held that Tileston did not have standing to litigate his patients' claims.

The appellants attempt to distinguish the *Tileston* case from the case at bar on the basis that the psysician in that case did not raise any constitutional issues of his own. However, the appellants have not cited any cases or offered reasoning that would indicate that this distinction has any legal significance. One wonders if the appellants in making this distinction between *Tileston* and the instant case have just cynically thrown in a few constitutional issues on behalf of the physician in the hopes of coming out from under the umbrella of *Tileston*. To allow the appellants to raise the claims of patients of the physician is particularly ludicrous in the light of the fact that it was a group of patients who testified against the physician and made possible the conviction.

Appellants further contend that the patients' constitutional claims can be raised because the Anti-Contraceptive Statute is "void on its face." Admittedly, this Court has permitted the assertion of a third person's constitutional rights in a group of cases, terming the statutes in question to be void on their face. However, this doctrine has been limited to cases where a statute by its terms prohibits the exercise of expression. In cases where a statute by its terms does not prohibit expression, but which is applied to expression situations this Court has not applied the doctrine. *United States* v. *Petrillo*, 332 U.S. 1 (1947); Sedler, *Standing to Assert Constitutional Jus Tertii in the Supreme Court*, 71 Yale L. J. 599 at page 612 (1962). Connecticut Anti-Contraceptive Statute deals with the use of contraceptive devices and only in a very secondary way through the accessory statute can it at all be considered to touch upon the rights of expression.

Nowhere in the record of this case prior to the notice of appeal to this court from the Supreme Court of Errors of Connecticut (R. p. 66) is there a claim 1) that these statutes are void on their face, 2) invade the privacy and liberty of women contrary to the Fourth, Ninth, and Fourteenth Amendments to the Constitution of the United States.

The Connecticut practice is that in order to be considered by the appellate Courts error must be specifically assigned and must "directly assert that the trial court committed error in the respects specified." (Connecticut Practice Book, (1963) Section 990). Further the claims of error must be briefed to be considered by the appellate court. (Conn. Practice Book, Section (1963) Section 1019). *Leo Foundation* v. *Cabelus*, 151 Conn. 655, 201 A2d 654, 655 (1964)

"As is always the case, however, state procedural requirements governing assertions and pursuance of direct and collateral constitutional challenges to criminal prosecutions must be respected." *Mapp* v. *Ohio*, 367 U.S. 643, 659, 6 L. Ed 2d 1081, 1092, 81 S. Ct. 1684, 1693, (1961) Note 9.

To say that the statutes are void on their face is a shocking claim. For then they could be used by the single and the married.

That contraceptives could be used by the married in relations with their spouses is a decision for legislative determination. But that single people should be allowed to use a contraceptive device is so contra to American experience, thought, and family law that it does not merit further discussion. That the appellant Griswold would supply contraceptives to the single element of society at the Center is only a conjecture. However, the appellants at the trial did introduce as defendants exhibit 4 a pamphlet entitled "Modern Methods of Birth Control" on the back inside cover of which was stamped the following:

"This publication was prepared under medical auspices for the use of persons 21 years of age or older, or married . . . ."

The appellants in their claims of error below and in their Brief before the Supreme Court of Errors, it is supposed, to avoid the ruling of *Tileston* v. *Ullman*, 318 U.S. 44, 46, 87 L. Ed 603, 604 (1942) that a physician could not litigate the rights of patients not parties to the action, put great emphasis on the proposition even to the point of putting it in italics that the issue was "a denial of defendants' " rights and not that of the patients. Brief of Defendants-Appellants (page 59) A-427 Connecticut Records and Briefs 615. Also the appellants in their Jurisdictional statement, p. 12, state that they are asserting rights personal to them. Manifestly since this has been the issue argued by them and considered by the courts below, they cannot now be permitted to change their grounds of appeal. It would certainly be a novel rule if defendants in a criminal case were allowed to set up as a defense rights personal to a state's witness who testified against the defendants.

II

THE DECISION OF THE APPELLATE DIVISION (R. 40-50) AND THE SUPREME COURT OF ERRORS (R. 61-63) THAT SECTION 53-32 AND 54-196 OF THE GENERAL STATUTES OF CONNECTICUT, REVISION OF 1958, SHOULD BE SUSTAINED ON THE GROUND THAT SAID STATUTES CONSTITUTE A PROPER EXERCISE OF THE POLICE POWER OF THE STATE.

Of the few jurisdictions that have ruled on the constitutionality of contraceptive statutes all seem to be in agreement with the Connecticut Court that the regulation of contraceptives is a legitimate exercise of the state's police power to regulate public morals. Harrison, *Connecticut's Contraceptive Statute: A Recurring Problem in Constitutional Law*, 35 Connecticut Bar Journal 315 (September, 1960)

See *Commonwealth* v. *Allison*, 227 Mass. 57, 116 N.E. 265 (1917); *Commonwealth* v. *Gardner*, 300 Mass. 372, 15 N.E. 2d 222 (1938); *People* v. *Pennock*, 294 Mich. 578, 293 N.W. 759 (1940); *People* v. *Byrne*, 99 Misc. 1, 163 N.Y.S. 682 (917); *People* v. *Sanger*, 222 N.Y. 192, 118 N.E. 637 (1918), appeal dismissed for want of jurisdiction, 251 U.S. 537, 64 L.Ed. 403, 40 S. Ct. 55 (1919); *State* v. *Arnold*, 217 Wisc. 340, 258, N.W. 843 (1935); *State* v. *Kohn*, 42 N. J. Super. 578, 127 A. 2d 451 (1956); *Sanitary Vendors, Inc.*, v. *Byrne*, 40 N. J. 157, 190 A. 2d. 876 (1963); *Cavalier Vending Corp.* v. *State Bd. of Pharmacy*, 195 Va. 626, 79 S. E. 2d. 636 (1954), appeal denied, 347 U. S. 995, 98 L. Ed. 1127, 74 S. Ct. 871 (1954); *Lanteen Laboratories* v. *Clark*, 294 Ill. App. 81, 13 N.E. 2d 678 (1938). Also see 1 C. J. S. — Abortion Section 44, page 341, 12 Am. Jr. 2d. — Birth Control, Section 4, page 370, and 96 A. L. R. 2d 948.

The fact that Connecticut's substantive statute (General Statutes, Section 53-32) is directed to the use of contraceptives and not to the dissemination of contraceptives — as are the statutes of some other states — is of no moment. For the Connecticut accessory statute (Gen. Stat. 54-196) when used in conjunction with the substantive statute bars the dissemination of contraceptives. In light of the Federal statutes (18 U.S.C. Section 1461, 18 U.S.C. Section 1462 and 19 U.S.C. Section 1305) — which contain prohibitions against mailing shipping or importing contraceptives or information about them — Connecticut's treatment of the contraceptive problem seems to be the most logical.

New York has a statute which prohibits the sale of contraceptives. There is an exception to that statute providing that physicians might use or prescribe such articles or drugs for the cure and prevention of disease. But in interpreting that section the New York Court, Cropsey, J. stated: "If it (New

York Statute) did in terms prevent the use of the articles, and make their use a crime, it would nevertheless be constitutional; and this would be so, even if there were no exception made to the provision." *People* v. *Byrne*, 163 N.Y.S. 682, 684 (1917).

The present action presents the same fact situation as was before this court in the cases of *Sanger* v. *People of the State of New York*, 251 U.S. 537, 64 L. Ed 403, 40 S. Ct. 55 (1919) and *Gardner* v. *Commonwealth*, 305 U.S. 559, 83 L. Ed. 353, 59 S. Ct. 90 (1938) — criminal convictions arising out of the operation of a birth control center where contraceptive were disseminated. This Court dismissed the appeals from the New York and Massachusetts Courts for want of a substantial federal question. It is submitted that the same should be done in the instant case.

As this Court has stated: "The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority . . . essential to the governing authority . . . essential to the safety, health, peace, good order, and morals of the community." *Jacobson* v. *Massachusetts*, 197 U.S. 11, 26, 49 L. Ed. 643, 650, 25 S. Ct. 358, 361 (1905).

Connecticut has statutes restricting several relations to the married with their spouses (Gen Stat. Section 53-218. Adultry and Gen. Stat. 53-219 — Fornication.) "[I]t (the Legislature) is not precluded from considering that not all married people are immune from temptation or inclination to extramarital indulgence, as to which risk of illegitimate pregnancy is a recognized deterrent. . . ." *State* v. *Nelson*, 126 Conn. 412, 424, 11 A 2d 856, 861 (1940).

The appellants and their friends in their attempt to assert that the Connecticut Statutes as herein used are an unreasonable

use of the police power have equated the use of contraceptives and the practice of birth control.

While it is true that to use contraceptives is to practice birth control; it is not correct to say that to practice birth control one must use contraceptives.

In Connecticut no one may use an article as a contraceptive. That does not mean that married people may not practice birth control. Abstinence, withdrawal and the rhythm method are available to the married in Connecticut. There can be no doubt that abstinence from sexual intercourse will prevent pregnancy. The appellants seem to think withdrawal is effective, for they introduced into evidence at the trial over the objection of the appellee Defendants' Exhibit No. 6, a book in which is contained the following:

> However, withdrawal has had a very poor reputation among doctors for generation, and some physicians still attribute many male and female ills to this technique. One gets the impression that such medical charges are more emotional than authoritive. In recent years, when some of us have been led to reexamine this method, we have been surprised to discover that there is virtually nothing of substance in medical literature to provide a scientific foundation for the charge. Guttmacher, *The Complete Book of Birth Control*, Ballantine Books, p. 64.

The rhythm system has been receiving more scientific attention of late. That the time of being able to pinpoint the time that ovulation occurs may be here may be seen from a recent gynecological report. Groden, *Ovulation Regulation*, 32 The Linacre Quarterly (February, 1965) pp. 66-72.

"Moreover, although it is somewhat dangerous to argue from statistics, at least one comparative study between those who

practiced contraception and those who practiced rhythm showed that the rate of infidelity was much higher among those who practiced contraception *(Supplément de la Vie Spirituelle*, 1958, No. 1, pp. 60-61), Connery, *The Sign*, October 1960.

III

Appellant's Constitutional Rights Are Not Violated By These Statutes

A

Appellant Buxton

It is argued by the appellant Buxton that his right to practice medicine is impaired. The state denies this. It is the opinion of the appellee that the practice of medicine is directed to the treatment, cure, and/or prevention of disease. Nowhere in either the testimony, findings, or claims of error is there any claim that the women who testified in this case were in other than perfect health.

Therefore, the operation of the Planned Parenthood Center by the Planned Parenthood League in New Haven was not the practice of medicine. Nor could it be, for in Connecticut a corporation cannot practice medicine. The exceptions to the foregoing restrictions in the practice of medicine are hospitals and clinics formed by three or more physicians. The Planned Parenthood Center of New Haven cannot fit either exception, nor can the appellant, Griswold, hide her conduct under the protective cover of the appellant Buxton's medical coat. Dr. Buxton's conviction rested on his behavior as staff doctor on the day of Mrs. Stevens' visit to the Center, not on his being the medical director of the Center. That when Mrs. Stevens was given a pelvic examination by Dr. Buxton, he was practicing medicine cannot be disputed by the state. But when he decided

that Mrs. Stevens could use the contraceptive jelly (State's Exhibit L) and it must be remembered that the decision as to the type of contraceptive to be used was in the final analysis the decision of the staff doctor who examined the "patient" — (Finding Par. 12e R. p. 19) it cannot be said that it was a medical decision. Mrs. Stevens is a young woman. She was married less than a year. There is no indication in the record that she was in other than perfect health. There is no legitimate medical reason in the record of this case why Dr. Buxton instructed Mrs. Stevens to use the contraceptive jelly and instructed her in its use. That Mrs. Stevens did in fact use the jelly as a contraceptive upon the advice of the appellants Buxton and Griswold who supplied Mrs. Stevens with the jelly and extracted a fee of $15.00 from Mrs. Stevens — was the undisputed testimony of Mrs. Stevens and was found as a fact by the trial court (Finding Par. 20 R. p. 22). Therefore the only reason for that can be advanced for Dr. Buxton's actions enabling Mrs. Stevens to use this jelly as a contraceptive was that it was in line with his social philosophy. It is the position of the appellee, the State of Connecticut, that this social philosophy must fall before the police power of the state.

"Besides, there is no right to practice medicine which is not subordinate to the police power of the states." *Lambert* v. *Yellowley*, 272 U.S. 581, 596, 71 L. Ed. 422, 429, 47 S. Ct. 210, 214, 49 A.L.R. 575, 583 (1926).

B

Appellant Griswold

The appellant Estelle T. Griswold was the Executive Director of the Planned Parenthood League of Connecticut, a salaried position (Finding Par. 5, R. p. 17). In addition she was Acting Director of the Planned Parenthood Center of New

Haven both before its opening and while it was in operation and was in charge of administration of the Center (Finding Par. 6, R. p. 17, Finding Par. 11, R. p. 18). From the Brief of the appellants (pp. 14-15) one might be led to the conclusion that the appellant Griswold was merely assisting the appellant Buxton. The converse is more accurate. "The policy of open defiance of the Connecticut Statute had been considered by the League as a possible response to an unfavorable decision of the Court (*Poe* v. *Ullman*, 356 U.S. 497, 81 S. Ct. 1752, 6 L. Ed. 2d 989 (1961)). Mrs. Richard Griswold, Executive Director of the League, had urged this approach, but not all of her colleagues agreed with her. But the League's Board of Directors unanimously endorsed Mrs. Griswold's position in a meeting one week after the decision was rendered." Smith, *The History And Future of the Legal Battle Over Birth Control*, 49 Cornell Law Quarterly 295-296 (1964). The appellant Griswold at all times was in charge of the Center. Her claim of a right to earn a living is entitled to the same consideration as would be a similar claim made by one charged with being a supplier of burglar tools.

"[I]t is entirely true — that no person in any business has such an interest in possible customers as to enable him to restrain exercise of proper power of the State upon the ground that he will be deprived of patronage." *Pierce* v. *Society of Sisters*, 268 U.S. 510, 535-536, 45 S. Ct. 571, 69 L. Ed. 1070 (1925). In that case it was held that the State could not make public schools the only schools for children from eight to sixteen years of age. This Court stated: "These parties (private schools) are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorious." *Pierce* v. *Society of Sisters*, supra p. 534. This cannot be said of the use of contraceptpives or indeed even of birth control. "Birth control is a highly controversal subject. Social thinking is divergent.

It finds frequent expression at legislative hearing." *Tileston* v. *Ullman*, 129 Conn. 84, 94, 26 A 2d 582, 587 (1942).

"Certainly, Connecticut's judgment (on contraception) is no more demonstrably correct or incorrect than are the varieties of judgment, expressed in law, on marriage and divorce, on adult consensual homosexuality, abortion and sterilization, or euthanasia and suicide." Mr. Justice Harlan, dissenting in *Poe* v. *Ullman*, 367 U.S. 497, 547, 6 L. Ed. 2d 989, 1021; 81 S. Ct. 1752, 1779 (1961).

C

Appellants' Freedom of Speech Has Not Been Violated

The appellants' claim of freedom of speech is without merit. It was not the speech of the appellants that caused their conviction. It was their actions. When they furnished contraceptive material to women to be used as contraceptives and instructed the women as to their use to prevent pregnancy, then the appellants have, under Connecticut law, committed a crime and have no more right to justify their conduct as being protected by the constitutional right of freedom of speech than a man yelling fire in a crowded theater, or a person placing a wager over the phone, or a purveyor of implements to one whom the purveyor knows intends to use them as burglar tools. To accept the appellants' claim of freedom of speech would be to change a right into a license.

IV

Comments As to Certain Claims Made by Appellants In Their Brief

There has been no invasion of anyone's privacy in this case. "The necessary proof of the offense was supplied by the voluntary testimony of three married women. This evidence was not

coerced nor was it illegally or surreptitiously obtained." Opinion of Appellate Division R. p. 47.

The legislative hearings concerning the repeal and/or amending of the Connecticut statutes banning the use of contraceptives (Conn. Gen. Stat. Rev. 1958 §§ 53-32 and 54-196) have shown that there is a dispute (to give the appellants the benefit of any doubt) as to the medical reasons for repealing the statutes or for amending them to allow doctors to prescribe contraceptives. At the hearings on House Bill (H.B.) 1177 to repeal what is now § 53-32 and H.B. 1182 exempting from the statutes a) physicians in the case where a danger to life or impairment of health of a married woman, b) married persons using method so proscribed, c) pharmacists filling such prescription, held by the Public Health and Safety Committee on April 20, 1955 several prominent physicians testified in opposition to the bills. John M. Paget, M.D., Neurologist and Neurological Surgeon, Diplomat of American Board of Neurological Surgery and a Fellow of the American College of Surgery stated: "As a specialist of the diseases of the nervous system, it is my considered opinion that the practice of birth control is frequently responsible for nervous disorders." page 268. Transcript of Testimony at Public Hearings. Several obstetricians and Gynecologists also spoke in opposition to the proposed bills: Jules Terry M.D. page 269, Katherine Quinn Nolan, M.D. p. 270 and Frederick C. LeBrett, M.D. pp. 272-274. Dr. LeBrett, who was the Chief, Department of Obstetrics and Gynecology at St. Mary's Hospital at Waterbury ended his testimony: "In conclusion, I object to these bills because, one, they will in no way reduce the incidence of hemorrhage, or toxemia in pregnancy, two all authorities agree that hemorrhage is best prevented by good pregnancy control not birth control, and three, all authorities including our own committee of the Connecticut State Medical Society agree that toxemia is best prevented by

good pregnancy control. No article on birth control or pregnancy prevention has been deemed worthy of print in the Year Book of Obstetrics and Gynecology for many years. It definitely has no place in our modern obstetrics practice." pp. 273-274.

Similarly at the hearing on H.B. 572, which would have permitted physicians to prescribe contraceptives to meet the health needs of married women and married women to use contraceptives so prescribed before the Public Health and Safety Committee of the Connecticut General Assembly on March 21, 1957, physicians spoke in opposition to the proposed legislation. Thomas J. Tarasovic, M.D., Obstetrician and Counselor of the Bridgeport Medical Society stated: "Modern medicine in recent years has made such important strides in affording new relief and treatment for conditions which previously seriously complicated pregnancy that it becomes almost a farce to need a measure allowing physicians to give contraceptive advice to married women patients whose health or life would be engendered by pregnancy." p. 297.

"Because of the new many successful procedures in the treatment of conditions complicating pregnancy, because our maternal mortality is now, as a result, at an almost irreducible minimum this bill becomes unnecessary." p. 298.

John F. Knowland, M.D. Surgeon, former president of the Bridgeport Medical Society testified in part: "I am here to oppose the proposed legislation, primarily because I am a physician. I will limit all my remarks to the medical aspects of this controversal subject." p. 299.

"Furthermore, I would have to appear before you today in opposition to this proposed legislation, because I feel that no doctor in the light of modern medicine and obstetrics can justifiably say to the cardiac, to the tuberculosis patient, to the hyper-

tensive that they could not have a baby." p. 300. The transcripts of testimony of the public hearings on bills before the Connecticut General Assembly — in the instances cited above before the Public Health and Safety Committees in 1955 and 1957, are official records of the State of Connecticut and may be found in the State Library at Hartford as well as in the Office of the Secretary of State. The above testimony is cited not as being an extensive treatment of the testimony before the General Assembly on the subject of contraceptives, but as an example of the medical testimony before the General Assembly in support of the retention of the contraceptive statutes in their present form.

From the foregoing it would appear — and giving the appellants the benefit of any doubts — that the situation before the General Assembly is quite similiar to that faced by Congress when it restricted the prescription of liquor. In both the *Lambert* v. *Yellowley*, 272 U.S. 581, 71 L. Ed. 442, 47 S. Ct. 210, 49 A.L. R. 575, (1926) and the case at bar it can be said that "High medical authority being in conflict is to the medicinal value," in the *Lambert*, supra, case liquor as medicine and in the situation presently before the Court the medical need for contraceptives, that the legislature acted within the scope of its police power. Nor can the *Lambert* case (supra). be distinguished from the case at bar on the grounds that Congress limited the amount of liquor a physician could prescribe while Connecticut by the use of its contraceptive statute (Sec. 53-32) and its accessory statute (Sec. 54-196) bars the physician prescribing contraceptives at all, for it is clear that had Congress banned physicians from prescribing liquor at all, the decision of *Lamber* v. *Yellowley*, supra, would have been the same.

One would thing that if there was a medical necessity for the repeal or amendment of Connecticut's contraceptive statute, the

Connecticut Medical Society would have taken a position that the statute be so repealed or amended. In an editorial comment to an article by the appellant Buxton entitled *Birth Control Problems in Connecticut — Medical Necessity, Political Cowardice and Legal Procrastination* in 28 Connecticut Medicine — Connecticut State Medical Journal (August, 1964) page 581, the editor notes: "The Connecticut State Medical Society has taken no official position on this problem."

The appellee emphasizes the opinions filed by the Courts below in the consideration of these cases — (Memorandum on Demurrer to Information (R. pp. 3-6, 9-12) filed by Lacy, J., the opinion of the Appellate Division of the Circuit Court (R. pp. 40-50), and the opinion of the Supreme Court of Errors of Connecticut (R. pp. 61-63). This is not the first time that the constitutionality of these two statutes has been under attack in the courts of Connecticut under various factual situations. *State* v. *Nelson* (and companion cases) 126 Conn. 412, 11 A. 2d 856 (1940), like the present case, was a criminal prosecution of two physicians and a nurse (no such occupation is claimed for the appellant Griswold) who were participants in the operation of a birth control center in Waterbury. The issue before the Supreme Court of Errors raised by demurrer was the constitutionalty of the State's charge that Dr. Nelson, Dr. Goodrich, and nurse McTernan assisted, abetted and counseled married women to use a drug and contraceptive device for the purpose of preventing conception because in the opinion of the defendants the preservation of the general health of the women required it. The Supreme Court of Errors citing *People* v. *Byrne*, 163 N.Y.S. (Supreme Court Term (1917) 682 and *Commonwealth* v. *Gardner*, 300 Mass. 372, 15 N.E. 2d 222 (1938), 305 U.S. 559, 59 S. Ct. 90, 83 L.Ed 353 (1938) (appeal dismissed for want of a substantial federal question)

held the statutes good against the constitutional attack as a proper exercise of the police power of the State.

From 1940 to the time of the instant case the Supreme Court of Errors of Connecticut has held the statutes here were a proper exercise of the police power of the State on three occasions. These were all actions for declaratory judgments. *Tileston* v. *Ullman*, 129 Conn. 84, 26 A 2d 582 (1942) held that these statutes prohibited a physician from prescribing contraceptives for married women in cases where pregnancy would endanger the life or health of the married women. This court dismissed an appeal on the grounds that a physician had no standing to litigate the rights of patients not parties to the action. *Tileston* v. *Ullman*, 318 U.S. 44, 46, 87 L. Ed. 603, 604 (1942). In 1959 the Supreme Court of Errors again held these statutes good against a claim of unconstitutionalty in cases where a physician, the same Dr. Buxton who is one of the appellants in the present case, and his patients claimed an exception for a physician to prescribe the use of contraceptives to married women in cases where pregnancy would endanger the life or health of married women. The difference between *Tileston*, supra, and the 1959 case was that in 1959 the married women and the physician were both parties to the action, *Buxton* v. *Ullman* (and companion cases), 147 Conn. 48, 156 A. 2d 508 (1959). This Court dismissed the appeals from the Supreme Court of Errors of Connecticut for an absence of a justiciable controversy. *Poe* v. *Ullman* (and companion cases), 367 U.S. 497, 6 L. Ed 2d 989, 81 S. Ct. 1752 (1961). The last case considered by the Courts of Connecticut prior to the present cases, was *Trubek* v. *Ullman*, 147 Conn. 633, 165 A 2d 158 (1960), 367 U.S. 907, 6 L. Ed 2d 1249, 81 S. Ct. 1917 (1961) appeal dismissed, certiorari denied. The issue was does a married couple have a right to use contraceptives, no medical reasons being advanced. In the record of the present

case there is no reason advanced such as in the previous cases that the statutes should not be applied. The closest fact situation would seem to be the *Trubek* case, supra, yet the appellants arguments and authority are directed more at a fact istuation as in *Tileston*, supra, or the earlier *Buxton*, supra — urgent medical reasons to avoid pregnancy. The only reasons that the appellants can legitimately raise in the present case for their participation in the Center which distributed contraceptives was that it was in accord with their social philosophy.

Again the appallents make the claim in their brief (page 11, 77) and in their Petition, p. 18, state that contraceptive devices may be obtained in Connecticut. There is no foundation in the record for this statement. In fact the opposite is true. In their assignment of errors to the Appellate Division of the Circuit Court, R. p. 37, and their Petition For Certification By the Supreme Court of Errors, R. p. 54, 58-59, the appellants cited as error the sustaining of objection made by the appellee to a question posed on cross-examination: "Now in the course of your investigation, Detective Berg, did you ascertain whether these products were available anywhere else in the City of New Haven?" This is the only place in the record where availability of contraceptives is mentioned. The appellants have not claimed this ruling on evidence in their Notice of Appeal to This Court nor in Questions to be reviewed in the Jurisdictional Statement. Manifestly they cannot make that claim now. In any case, it is Hornbook law that it cannot be set up as a defense to a prosecution of a crime that another who has committed the same offense has not been indicted. 1 *Whartons Criminal Law*, 12th Ed. Section 392. Further even if the appellants had introduced evidence at the trial that contraceptives were readily available, they did not, or requested the trier to take judicial notice of the supposed availability and use of contraceptives, they made no

such request, it still would not help the appellants in this case. A custom and usage prevailing in a community cannot be set up as a defense to a prosecution for a crime, because such custom and usage cannot operate to supersede a criminal statute, or to overthrow the rules of evidence by which the commission of an offense si proved, even though such custom and usage may have been for a long time acquiesced in by the community in which it prevails. 1. Whartons Criminal Law, 12th Ed. Section 388. If such were not the rule, no one would be convicted of gambling offenses.

At page 10 of the appellant's Brief a portion of a letter by the then State Commissioner of Food and Drugs is quoted to substantiate their claim regarding the sale of contraceptive devices. The letter referred to is not based upon any legal authority, and, at most, represents the personal views of the then Commissioner.

As is evidenced by the following, the present Commissioner does not share the views quoted by the appellants: "Please be advised that this officer is not responsible for or agreed with what might have been the opinion of the Commissioner of Food and Drugs of that date." Letter of Commissioner Frassinelli, dated June 30, 1960, to Fowler. V. Harper. Further an article in the August 28, 1962 edition of the Hartford Courant indicates that the State Consumer Protection Commissioner persuaded a pharmacy chain in the Hartford area to stop the sale of foam contraceptive.

Again the appellants in their brief pp. 72-74 cite the so-called population explosion. It is interesting to note that in both the nation and in the State of Connecticut the birth rate is on the decline. An Associated Press release emanating in Washington, D.C. as reported in the New Haven Register of

September 21, 1964 states that "[t]he population reference bureau says the birth rate in the United States is declining." "In a report the bureau said the decline cannot be attributed either to a change in childbearing potential of American women or the development of new contraceptives." The Connecticut statistics on births are even more informative. According to the State Department of Health as reported in the New Haven Register of December 29, 1964 there were ten fewer births in Connecticut in the first ten months of 1964 as compared to the previous year. The complete figures for 1964 as reported in the New Haven Register of February 21, 1965 shows that the birth rate dropped from 20.6 to 20.2 per 1,000 population, making the seventh successive year that the rate has decreased.

The arguments of the appellants in essence attack the desirability of these statutes. It has been held that the Supreme Court may not decide the desirability of legislation in determining its constitutionality; the forum for correction of ill-considered legislation being a responsive legislature. *Daniel* v. *Family Sec. Life Ins. Co.*, 336 U.S. 220, 69 S. Ct. 550 (1949)

CONCLUSION

The judgment of the Supreme Court of Errors of Connecticut should be affirmed.

Respectfull submitted,

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171 Church Street
New Haven, Connecticut
March 8, 1965

CERTIFICATE OF SERVICE

I, Joseph B. Clark, counsel fo rappellee, and a member of the bar of the Supreme Court of the United States do hereby certify that on the 8th day of March, 1965, I served a copy of the foregoing Brief For Appellee upon the appellants by personally delivering four copies to Thomas I. Everson, Esq. at his office at 127 Wall Street, New Haven, Connecticut and four copies to Catherine G. Rorabach, Esq. at her office at 185 Church Street, New Haven, Connecticut.

JOSEPH B. CLARK
Counsel for Appellee

APPENDIX A

Public Acts of 1879
Senate Bill No. 43
Chapter LXXVIII

An Act to Amend an Act concerning Offences against Decency, Morality, and Humanity.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

That section four, Chapter eight, title twenty, page 513 of the General Statutes be amended so as to read as follows:

Every person who shall sell, or lend or introduce into any family, college, academy, or school, or shall have in their possession, for any such unlawful purpose or purposes, and obscene, lewd, or lascivious book, pamphlet, paper, picture, pprint, drawing, figure, or image, or other publication of an indecent nature, or who shall manufacture, sell, advertise for

sale or have in their possession, for any such unlawful purpose or purposes, any article, thing, or instrument designed, or intended and adopted for, any indecent and immoral use, purpose, or nature, or use any drug, medicine, article, or instrument whatsoever, for the purpose of preventing conception, or causing unlawful abortion, shall be fined not less than fifty dollars nor more than three hundred dollars, or imprisoned not less than sixty days, nor more than one year, or both.

Approved, March 28, 1879.

Title 20, Ch. 8, Sec. 4, p. 513 — Conn. Gen. Stat. Rev. 1875

Sec. 4 — Every person who shall purchase or introduce into any family, college, academy or school, any printed or engraved matter containing obscene language, prints, or descriptions, or any drawing or figure of an obscene character, shall be fined not more than seven dollars.

APPENDIX B

The Adoption of the Contraceptive Statute in The General Assembly of Connecticut — A History of Legislative Action

On February 7, 1879 Senator Carlos Smith of the 4th District introduced Senate Bill No. 43 entitled: "An Act to Amend an Act Concerning Offenses Against Decency, Morality, and Humanity." The bill provided penalties for the sale of obscene literature and the manufacture and sale of indecent instruments, illegal drugs, and medicines etc. The bill was read for the first time and referred to the Committee on Temperance (Senate Journal (S.J.) p. 236.

On February 11, 1879 hte bill was received in the House of Representatives read for the first time and referred to the Committee on Temperance .House Journal (H.J.) p. 272.

On February 13, 1879 the Temperance Committee of the Senate recommended passage, the bill was read for the second time, and tabled for the calendar and printing. (S.J. p. 294).

On February 19, 1879 hte bill was taken from the table in the Senate, read for the third time, explained by Senator Hoyt of the 12th District, the Chairman of the Committee. The report of the Committee was accepted and the bill passed. S.J. p. 317).

On February 20, 1879 the House Committee on Temperance having received notice that the bill had passed the Senate recommended passage of the bill. The bill was read for a second time, and on motion was recommitted to the committee (H.J. 333-334).

On February 25, 1879 the Senate having received notice that the House had recommitted the bill to committee voted to reconsider the bill and recommitted it to committee (S.J. 339).

On March 6, 1879 the Temperance Committee reported that it recommended rejection of the bill and adoption of a substitute bill. The substitute bill was read twice and tabled for the calender and printing (S.J. p. 414).

On March 12, 1879 the Senate took the substitute from the table, the bill was read for a third time and explained by Senator Hoyt, the Chairman of the Committee. The substitute bill passed (S.J. p. 449). On the same day the House received notice that the Senate had passed the substitute bill — read it twice and tabled the bill for the calendar and printing (H.J. 488).

On March 18, 1879 the bill was taken from the table in the House and read a third time. A substitute was offered on the floor. The bill was withdrawn by the chairman of the Temperance Committee. (H.J. p. 548).

On March 19, 1879 the bill was again taken from the table in the House. The bill was rejected after explanation by Mr. Barnum of Bridgeport. The substitute bill was rejected, the report of the committee rejected, and the bill was reconsidered and tabled. (H.J. p. 576).

On March 20, 1879 the House again took the bill from the table. The bill was read and discussed by Mr. DeForest of Middlebury. The bill as amended passed. (H.J. p. 594).

On March 21, 1879 after discussion by Senators Hoyt, Mather, Patton, and Smith, the Senate voted to reconsider its previous actions and passed the bill as amended.

APPENDIX C

Attempted Repeal and/or Amendment of the Contraceptive Statutes in the Connecticut General Assembly

1917 — House Bill No. 221. (by request — this phrase is placed on a bill by the legislator who introduces it showing that he is introducing a bill for a person but that the legislator does not favor the adoption of the bill), entitled "An Act repealing Section 1327 of the General Statutes." Rejected by the House (H.J. p. 694) and Senate (S.J. p. 755).

1923 — House Bill 504 Exempting physicians and nurses from the statute when giving advice. Rejected by House (H.J. p. 826) and Senate (S.J. p. 832).

1925 — Senate Bill No. 446 (by request) providing for an

exception allowing physicians to prescribe contraceptives. Rejected by Senate (S.J. p. 692) and House (H.J. p. 763).

1927 — House Bill No. 105 again an exemption for physicians. Rejected by House (H.J. p. 713) and Senate (S.J. 711-712) Senate Bill 145 (by request) to repeal the statute. Rejected by Senate (S.J. p. 673) and House (H.J. pp. 743-744).

1929 — Senate Bill No. 44 (by request) to repeal the statute. Rejected by Senate (S.J. p. 577) and House (226—18) (H.J. p. 663-664).

1931 — House Bill No. 156 providing for an exception in favor of physicians. The committee recommended rejection and adoption of a substitute which would allow exemption only when physician found a pregnancy would constitute a danger to life or health. After the Amendment failed the House rejected the bill 172-76 (H.J. p. 999), and the Senate (S.J. p. 975). House Bill No. 156 provided for legislation of use of contraceptives under the direction of physician. Rejected by House (H.J. p. 526) and Senate (S.J. p. 521).

1933 — House Bill No. 519 provided an exemption to physicians for reasons of health. An amendment was offered on the floor of the House. It passed 169-80 (H.J. pp. 1489-1494). After the Senate had rejected the Bill 20 Senators voted to reject) (S.J. 1586), the House again voted to pass the bill as amended 171-72 (H.J. p. 1776). The Senate tabled the bill after debate (S.J. p. 2054).

1935 — House Bill No. 850 — providing for an exemption for preservation of health. Passed by House (H.J. p. 547). The senate recommitted the bill to Committee (S.J. p. 517) where it died.

1941 — House Bill No. 1813 — provided exemption to hospitals and institutions under supervision of physician to

prescribe for married women. Substitute bill passed house 164-64 (H.J. p. 1568). Rejected by Senate 23-9 (S.J. p. 1749).

1947 — House Bill No. 953 exemption when life or health endangered. House passed (H.J. p. 733). Senate rejected (S.J. p. 753).

1949 — House Bill No. 1110 exemption in favor of married women was referred to the Committees on Public Health and Safety and was never reported out of Committees (H.J. p. 307) (S.J. p. 368). Senate Bill No. 570 was an act to ban the future introduction of bills to change the contraceptive statute. It was tabled in the Senate (S.J. p. 531) and never reported out of Committee in the House.

1951 — House Bill No. 1483 exemption when life or health effected. Passed by House 121-62 (H.J. p. 717). Senate bill No. 696 — identical with House Bill No. 1483. The Senate committee never reported the bills out.

1959 — House Bill No. 3497 allowed an exception pursuant to spiritual and medical advice was never reported out of the House and Senate Committee.

1961 — House Bill No. 3753 to repeal the statute House Bill No. 3741 exemption for the married was never reported out of the Senate Committee. H.B. No. 3753 never came to a vote in either branch of the General Assembly.

1963 — House Bill No. 3790 to repeal the statute. Passed by House 149-66 (H.J. p. 1132). Senate Committee never reported the bill out.

1965 — According to the newspapers a bill was introduced in the General Assembly on February 10, 1965. Counsel for appellee has not been able to obtain a copy of the bill as of this date.